

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Request for Additional
Educational Consultant Services for:

OAH No. 2011070585

CLINTON L.

Claimant,

and

SAN DIEGO REGIONAL CENTER,

Service Agency.

DECISION

Mary Agnes Matyszewski, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in San Diego, California, on October 6, 2011.

Mary L., claimant's mother, represented claimant, who was not present for the fair hearing.

Ron House, Esq., represented the service agency, San Diego Regional Center (SDRC).

Oral and documentary evidence was received and the matter was submitted on October 6, 2011.

ISSUE

Should the agency fund claimant's request for additional educational consultant services?

FACTUAL FINDINGS

Jurisdictional Matters

1. On June 15, 2011, SDRC served claimant with a notice of proposed action denying claimant's request for funding for an educational consultant.¹ On July 13, 2011, SDRC received claimant's request for a fair hearing objecting to SDRC's decision and this appeal followed.

Claimant's Eligibility and Services Currently Provided

2. Claimant is a 19-year-old male diagnosed with moderate mental retardation, autism, mild cerebral palsy and seizure disorder. Pursuant to a June 21, 2010, Order following an administrative hearing, SDRC funded an additional 8.5 hours of educational consultant services for claimant through March 2011. Claimant now seeks additional educational consultant services.

Evidence Introduced at Hearing

3. Sylvia Ollinger, claimant's SDRC service coordinator, testified about the behavior and educational consultant services that SDRC has funded, explaining that the Individualized Education Plan (IEP) documents and reports from the educational consultant indicated that behaviors were also addressed in claimant's IEPs. Ollinger identified generic resources in the community which can assist claimant, and she testified that she could accompany claimant's mother to the IEP meetings, an offer claimant's mother previously declined. While Ollinger conceded that claimant's educational consultant is an "expert" in the field, no evidence was introduced that demonstrated that Ollinger lacked the skill, training, experience, resources or education to provide effective educational consultant services to claimant.

4. DeeDee Spangler, claimant's educational consultant, testified about the extensive work she has done on claimant's behalf. Spangler first met claimant and his family when she taught at his former school and claimant became one of her first clients when she launched her educational consultant business. While Spangler is extremely knowledgeable, Spangler and claimant's mother have formed a co-dependent relationship, one which clouds the perceptions and objectivity each possesses concerning Spangler's services and claimant's need for those services.

5. Claimant's mother testified at length about claimant's educational history and the various issues that she and Spangler have had to deal with in the school district. While

¹ Claimant alleged that SDRC originally served him with a Notice of Proposed Action (NOPA) identifying another consumer and that the second NOPA packet did not contain a NOPA that identified him. However, the documents introduced at hearing demonstrated that SDRC served claimant with a NOPA. The lack of jurisdiction was not alleged as an issue in the Request for Fair Hearing.

that testimony provided an historical framework, it failed to establish a present need for the requested service by a preponderance of the evidence.

LEGAL CONCLUSIONS

Burden of Proof

1. In administrative proceedings, as in ordinary civil actions, the party asserting the affirmative generally has the burden of proof, including the burden of persuasion by a preponderance of the evidence. (*McCoy v. Board of Retirement* (1986) 183 Cal.App.3d 1044, 1051-1052.) In this matter, claimant had the burden of establishing that SDRC should fund his request for additional education consultant hours.

The Lanterman Act

2. The Legislature enacted a comprehensive statutory scheme known as the Lanterman Developmental Disabilities Services Act to provide a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

3. The Lanterman Act provides a pattern of facilities and services sufficiently complete to meet the needs of each person with developmental disabilities, regardless of age or degree of handicap, and at each stage of life. The purpose of the statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community, and to enable them to approximate the pattern of everyday living of nondisabled persons of the same age and to lead more independent and productive lives in the community. (*Association for Retarded Citizens v. Department of Developmental Services* (1985) 38 Cal.3d 384, 388.)

4. The State Department of Developmental Services (the DDS) is the public agency in California responsible for carrying out the laws related to the care, custody and treatment of individuals with developmental disabilities under the Lanterman Act. (Welf. & Inst. Code, § 4416.) In order to comply with its statutory mandate, the DDS contracts with private non-profit community agencies, known as “regional centers,” to provide the developmentally disabled with “access to the services and supports best suited to them throughout their lifetime.” (Welf. & Inst. Code, § 4620.)

5. A regional center’s responsibilities to its consumers are set forth in Welfare and Institutions Code sections 4640-4659.

6. Welfare and Institutions Code section 4648 not only provides that regional centers obtain programs and services that assist the individual consumer, but also imposes fiscal responsibility on regional centers.

Evaluation

7. Although claimant's mother testified that she was "not concerned" about how much the requested services might cost, and that she only wanted what was best for her son, a regional center must consider the cost of requested services, which it is legislatively mandated to do. The evidence overwhelmingly established that claimant's mother is an extremely capable advocate on her son's behalf; that SDRC has funded thousands of dollars for educational and behavioral services for claimant which were very effective in addressing claimant's needs that existed at that time; and that there is absolutely no need for SDRC to fund additional educational services for claimant. The evidence clearly established that funding those services at this time would be an irresponsible and wasteful expenditure by SDRC, a luxury for claimant, and completely unnecessary.

Moreover, despite the testimony that claimant is now seeking new services in his new school setting, the evidence did not establish that claimant's mother and SDRC lack the ability to address those issues or that the new school refuses to provide needed services to claimant. Even if it were to do so, the evidence did not demonstrate that claimant needed an educational consultant to resolve such an issue if it should arise.

Cause Exists to Deny the Request for Additional Educational Consultant Hours

8. A preponderance of the evidence did not establish a need for SDRC to fund any additional educational consultant services for claimant. SDRC correctly determined that claimant is not eligible for additional educational consultant services at this time.

ORDER

Claimant's request for that SDRC fund additional educational consultant hours is denied. SDRC shall not fund claimant's request for educational consultant services.

DATED: October 12, 2011

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within ninety days.